

**Before the  
Commission on Common Ownership Communities  
Montgomery County, Maryland**

In the Matter of:

**Anita and Brij Vinaik**

Complainants,

v.

**Quince Orchard Estates HOA**

Respondent

Case No. 55-08  
July 17, 2009

**DECISION AND ORDER**

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and arguments on May 7, 2009, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code. The hearing panel has considered the testimony and evidence presented, and finds, determines, and orders as follows:

**Background**

Anita and Brij Vinaik (Complainants), the owners of the residential unit located at 15612 Fellowship Way, Gaithersburg, Maryland, filed a complaint with the Commission on Common Ownership Communities on September 26, 2008. Complainants alleged:

1. Their residential unit is within the Quince Orchard Estates Homeowners Association (Respondent) community.
2. Respondent improperly assessed Complainants \$125.00 for landscaping at Complainants' unit.

Before the hearing, multiple pieces of correspondence intended for Complainants from the Commission were incorrectly sent to 13901 Darnestown Road, North Potomac, Maryland. Complainants' correct address is 12901 Darnestown Road. Consequently, Complainants did not receive notice of the location of the hearing (specifically, the room number) and interrogatories from Respondent. After questioning Complainant Brij Vinaik and examining the documents in question, the Panel determined that the errors would not affect the conduct or outcome of the hearing.

## **Findings of Fact**

1. Several facts and circumstances surrounding the events related to this case are in dispute. However, the case centers on whether Respondent properly charged \$125.00 to Complainants for landscaping.

2. Respondent is a homeowners association established pursuant to the Maryland Homeowners Association Act (Title 11B of the Real Property Article of the Code of Maryland), whose governing documents are recorded in the land records of Montgomery County, Maryland, and which constitute covenants running with the land and affecting all lots within that association.

3. 15612 Fellowship Way is not occupied by Complainants and is currently occupied by a lessee through a lease agreement with Complainants. This fact was acknowledged by Complainants and Respondent's property manager during the hearing. This was also acknowledged in prior correspondence from Respondent's Board of Directors President to Complainants on April 30, 2004, and sent directly to Complainants' residence at 12901 Darnestown Road, North Potomac, Maryland.

4. Complainants are the owners of a lot governed by the Respondent's governing documents. At the hearing, Respondent moved to have Complainants' complaint with the Commission dismissed on the ground that the complaint was filed by Brij Vinaik who did not have standing to make the complaint. During questioning, Brij Vinaik stated that he was not an owner or occupant of 15612 Fellowship Way at the time he filed the complaint in September 2008. However, Anita Vinaik, the owner of 15612 Fellowship Way, made an appearance at the hearing through counsel. Therefore, Respondent's motion to dismiss is denied.

5. On August 26, 2008, Respondent's property manager sent Complainants a letter informing Complainants that they needed to perform maintenance on "plant beds" at 15612 Fellowship Way and referenced "Article VII, Section 7.01 of the Declaration of Covenants, Conditions and Restrictions." Article VII of Respondent's community documents states in relevant part,

"Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting ... of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot in the Property shall fail to maintain the Lot and the improvements situated thereon, the Board of Directors or its agent shall have the right to enter upon said Lot to correct drainage and to repair, maintain and

restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Lot, and such lien may enforced in the same manner as an annual assessment levied in accordance with Article IV hereof.”

The letter stated in relevant part,

“A reinspection was done on August 19, 2008 and it was determined that you [Complainants] did not comply. Under the Architectural Violation Enforcement Procedures, you are being provided 15 days from the date of this letter to comply with the above violation(s). If you do not comply within the 15 day period, we will contract someone and have the work done and you will be charged accordingly.”

6. Some time between August 26, 2008, and September 9, 2008, Respondent's property manager directed McCarthy Grounds Maintenance, Inc. (McCarthy) to inspect 15612 Fellowship Way and correct any landscaping violations. The owner of McCarthy testified that the grass at 15612 Fellowship Way was overgrown – as tall as more than two feet in some places – and that his employees performed extensive landscaping work to bring the property into compliance on or before September 9, 2008. The owner of McCarthy testified that there was also a significant amount of “debris” hidden in the grass that had to be moved, including a large section of carpeting. McCarthy submitted an invoice to Respondent for landscaping work totaling \$125.00 and dated September 9, 2008.

7. September 9, 2008, is 14 days after August 26, 2008.

8. On September 16, 2008, Respondent's property manager sent Complainants a letter along with McCarthy's invoice and stated that Complainants would be charged \$125.00 for landscaping services. Respondent's property manager deducted \$125.00 from Complainants' account after Complainants filed a complaint with the Commission on September 26, 2008. Complainant Brij Vinaik testified that he repeatedly requested that Respondent's property manager restore these funds. Respondent's property manager testified that his computer accounting system automatically deducted \$125.00 from Complainants' account and that if the money were restored to the account it would be automatically deducted again. Complainants presented a statement for their account showing \$125.00 had been restored in March 2009.

9. Respondent's property manager testified that he informed Complainants of architectural violations on previous occasions before August 26, 2008, including orders that Complainants correct violations on the exterior of the structure at 15612 Fellowship Way. This includes a letter from Respondent's property manager to Complainants, dated May 2, 2008, stating that Complainants needed to perform maintenance on the

garage door, exterior door trim, window trim, gutters, downspouts, and exterior light fixture. The letter also stated that the “lawn and shrubs are not being maintained,” and “[a]ll of the planting beds are overgrown.” Respondent’s property manager also testified that the full extent of landscaping overgrowth encountered by McCarthy in late August or early September 2008 could not be seen from the publicly-accessible sidewalk and could only be seen by entering Complainants’ property.

10. Complainant Brij Vinaik testified that he had promptly corrected all violations when previously notified and had ensured that the landscaping around 15612 Fellowship Way was properly maintained. Complainants’ tenant testified that she regularly paid a landscaping contractor to maintain the yard around 15612 Fellowship Way.

11. A resident living near 15612 Fellowship Way and also within Respondent’s community testified that the grass around 15612 Fellowship Way was regularly overgrown and did not show signs of proper maintenance. He also testified that he had seen “debris” in the yard around 15612 Fellowship Way.

12. On January 7, 2009, Respondent’s property manager sent Complainants a letter stating,

“the grass [at 15612 Fellowship Way] should never be longer than 4 ½ inches at any time. The standard is grass may be cut to 3 inches. The shrubbery around your property is to be trimmed to be in a [sic] acceptable appearance. I will define that as the shoots shall not exceed 6 inches and are to be kept within the landscaping borders. All beds must be weeded no less than monthly. Beds are to be edged at least twice per growing season. ... All grass areas are to have fertilization and weed control to provide for adequate turf coverage.”

## **Conclusions of Law**

### **Landscaping Fee**

The Panel agrees with Complainants that they were improperly assessed \$125.00 by Respondent. A simple reading of Respondent’s property manager’s letter of August 26, 2008, allowed Complainants 15 days to correct a violation. However, Respondent took action before 15 days had expired. Respondent also failed to comply with Montgomery County Code when it deducted \$125.00 from Complainants’ account after Complainants had filed a complaint with the Commission and failed to restore those funds until March 2009.

## **Property Maintenance**

Attorneys for both Complainants and Respondent went to great lengths during the hearing to try to demonstrate whether 15612 Fellowship Way's exterior and landscaping were properly or improperly maintained. Much of this testimony and evidence was unrelated to the dispute over the \$125.00 landscaping fee. However, there is clearly an ongoing dispute between Complainants and Respondent over the standards to which property must be maintained.

In his letter to Complainants dated January 7, 2009, Respondent's property manager stated landscaping standards that do not appear to have any basis. In fact, at one point in the letter, he stated, "I will define that as... ." Community property managers are not permitted to arbitrarily define or impose architectural and maintenance standards on a community. What is most important is that community owners and residents be provided clear explanations of maintenance standards and that homeowners' associations follow: 1) their governing documents; and 2) any direct statements to community owners and residents regarding compliance with those documents.

Based on the evidence presented, it is possible that Complainants have not properly maintained the landscaping around 15612 Fellowship Way at various times. However, Respondent made no claim for relief in this respect, so there is no need to make any conclusions beyond the fact that all residents of Respondent's community must comply with duly adopted architectural and environmental standards.

Further, the Panel would like to note that any resident can file a complaint about lawn maintenance and other matters with the Montgomery County Department of Housing and Community Affairs by calling 240-777-3600 or 240-777-3785 or through the county website.

## **Order**

Based on the evidence of record and the reasons stated above, it is ordered on this 17<sup>th</sup> day of July, 2009, that Respondent immediately remove the \$125.00 landscaping fee from Complainants account and any associated liens that may have been applied. Within thirty (30) days of this order, Respondent shall also pay Complainants the \$50.00 filing fee for filing a complaint with the Commission.

Within thirty (30) days from the date of this decision, Respondent also must provide written copies of this decision and the association's architectural and environmental standards to all unit residents and owners.

No later than sixty (60) days from the date of this decision, the Board must hold a properly-announced meeting to: (a) review and discuss their current dispute resolution procedures to ensure they comply with the HOA's own rules and provide at least

minimum due process protections (written notice of violation; an opportunity for the owner/resident to request a hearing with the Board; and written notice of the Board's final decision); (b) include a summary of those procedures in the minutes of the meeting; (c) review and discuss their current architectural and environmental standards and procedures for changing those standards; (d) include a summary of those procedures in the minutes of the meeting; and (e) distribute a written copy of the minutes to all unit residents and owners. The Respondent must provide a copy of

the agenda and of the minutes of that meeting to the Complainants and to the Commission's staff.

If Respondent fails to meet the requirements of this order, Complainants may pursue any remedies available to them. The County may also enforce this order pursuant to Section 10B-13(j) of the Montgomery County Code.

Within sixty (60) days from the date of this decision, Respondent or its agent may enter the property at 15612 Fellowship Way once to inspect the exterior of any structures and the yard for possible violations without advance notice to Complainants. If any violations are found, Respondent may then take appropriate steps to correct those violations in accordance with its governing documents and established procedures. After sixty (60) days from this decision, if no violations have been found, Respondent shall resume its standard inspection procedures.

Commissioners Jeffrey Kivitz and Clara Perlingiero concurred in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, under the Maryland Rules of Procedure.

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Douglas Shontz, Panel Chair  
Commission on Common Ownership Communities